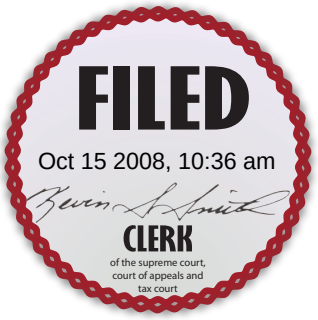

APPELLANT PRO SE:

CHARLES E. JUSTISE, SR.
Greencastle, Indiana

ATTORNEYS FOR APPELLEE:

ALAN M. HUX
TRACY N. BETZ
Taft Stettinius & Hollister LLP
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

CHARLES E. JUSTISE, SR.,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 49A02-0801-CV-21
	)	
NEXTEL WEST CORP. d/b/a NEXTEL COMMUNICATIONS,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Cynthia J. Ayers, Judge
Cause No. 49D04-0511-PL-43011

October 15, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Charles Justise[1] appeals the trial court's grant of summary judgment in favor of Nextel West Corp., d/b/a Nextel Communications ("Nextel"). Justise raises a single issue for our review, namely, whether the trial court properly granted summary judgment in favor of Nextel.

We affirm.

FACTS AND PROCEDURAL HISTORY

On November 2, 2005, Justise filed suit against Nextel under Indiana's Deceptive Consumer Sales Act, Indiana Code Sections 24-5-0.5-1 to -12. Justise's complaint alleged, in relevant part, as follows:

> 1. When [Justise] first became a Nextel customer, he was told that he signed on to [sic] another existing Nextel account, not only would he get a Nextel phone with service, but if he stayed on the account for six months, then he would be able to get his own account with no deposit.
>
> 2. The reps [sic] name that told Justise this was Brain [sic]. Brain [sic] also informed Justise that the bill would be split, and Justise's portion of the bill would come to Justise's address, and if one person paid their portion of the bill, then the line would not be interrupted for the party that paid their bill.
>
> 3. This same rep also explained in great detail, that the spending limit accounts, would not be interrupted unless the spending limit is

[1] Charles Justise, f/k/a Charles Brownie, is no stranger to the justice system in Indiana. See Justise v. Zenith Logistics, Inc., No. 05-4087, 2006 U.S. App. LEXIS 16318 (7th Cir. April 26, 2006) (affirming the district court's grant of summary judgment against Justise on a 42 U.S.C. § 2000e claim); Brownie v. Gambill, No. 96-2749, 1997 U.S. App. LEXIS 9982 (7th Cir. April 30, 1997) (affirming the district court's grant of summary judgment against Brownie on a 42 U.S.C. § 1983 claim); Justise v. Fenoglio, No. 1:04-cv-1083-DFH-JMS, 2008 U.S. Dist. LEXIS 43596 (S.D. Ind. June 2, 2008) (denying Justise's motion for contempt and sanctions); Justise v. Johnson, No. 1:04-cv-1083-DFH-JMS (granting summary judgment against Justise on another § 1983 claim); Brownie v. Local Union No. 135, No. 1:04-cv-1183-LJM-VSS (S.D. Ind. July 14, 2005) (granting summary judgment against Brownie on a 29 U.S.C. § 185 claim); Brownie v. Hartzler, No. 77A04-9704-CV-127, 1998 Ind. App. LEXIS 219 (Ind. Ct. App. Feb. 5, 1998) (affirming trial court's judgment against Brownie); Brownie v. Walker, No. 77A01-9610-CV-360, 1997 Ind. App. LEXIS 860 (Ind. Ct. App. June 4, 1997) (same).

reached. Justise clarified that his phone service would not be interrupted until he reached the spending limit of $250.00. The rep agreed, and Justise that he (Justise) [sic] understood it correctly. Accordingly, under all the deceptive sales (lies), Justise signed a contract for service, and has since had problems over and over.

4. When it was time for Justise to get a change of ownership, he pointed out that he was told that it would be free, and the company still charged Justise $100.00. Justise has been turned off several times when account [sic] is under $250.00[.] When Justise calls in about his account, he is told that a spending limit really means nothing, and that Nextel can turn off his phone if he is behind on his payments more than $5.00. Justise had asked a rep over the phone, at Nextel [sic] toll free number, what then, is the point of having a spending limit, and was told verbatim, "there is no [sic] I guess."

5. It was explained to Justise on August 26th, 2005 that few people see the spending limit before their account is suspended. This lady identified herself as a Lead named Cathy . . . . She said she worked at Carter Hanson, and when Justise informed her that a suit is being looking into against Nextel, she stated that she dared Justise to sue the company.

6. On August 24th, 2005 Justise spoke with a rep who stated that a payment arrangement of $80.00 payable on 8/26/05 before five O'clock P.M., and an additional payment on 9/2/05 of another $80.00 would be acceptable to keep Justise's phone service from being disconnected. Justise recorded the phone conversation with his Nextel phone and played the conversation for manager Cathy, who stated that on this type of account, no arrangements could be made. Justise asked Cathy why wouldn't the agreement that the rep proposed, and Justise agreed upon, be honored, and she replied because she didn't want to honor it.

7. Justise have [sic] incurred lots of damages as a result of Nextel's deceptive practices. Justise has paid over $1000.00 to Nicholas Warren, whose Nextel account Justise was on. Justise had no choice but to pay these fees, as he was trying to keep his phone activated.

8. Justise has also missed the opportunity to work at a prestigious company here in the Indianapolis area because HR for that company couldn't reach Justise during one of the periods his phone was off, but his so-called spending limit was not reached yet. The job paid approximately $70,000.00 a year.

Appellee's App. at 3-4 (footnote omitted). Justise then requested $550,000 in damages against Nextel.

On October 30, 2006, counsel for Nextel sent to Justise, via certified mail, a request for admissions pursuant to Indiana Trial Rule 36. Justise's signature is on the certified mail receipt that accompanied that discovery request. See id. at 22. Among other things, Nextel requested Justise to admit or deny the following statements:

> **REQUEST NO. 6**: The May 2005 contract entered into by and between Nextel and the Plaintiff had an account spending limit of $250.00.
>
> * * *
>
> **REQUEST NO. 7**: An account spending limit with Nextel establishes a maximum amount of spending per month and provides notification when a customer reaches certain spending thresholds.
>
> * * *
>
> **REQUEST NO. 8**: An account spending limit with Nextel is not a prepaid account.
>
> * * *
>
> **REQUEST NO. 9**: When the Plaintiff entered into a contract with Nextel in May of 2005, the Plaintiff was informed that a $250.00 account spending limit was placed on the Plaintiff's Nextel account . . . .
>
> * * *
>
> **REQUEST NO. 10**: The Plaintiff received monthly invoices for payment from Nextel . . . .
>
> * * *
>
> **REQUEST NO. 11**: Monthly invoice payments must be made by the Plaintiff to Nextel by the due date on the monthly invoice in order to maintain cellular telephone service.
>
> * * *

> **REQUEST NO. 12**: Plaintiff was notified on August 24, 2005, by a Nextel representative that he must make payments every thirty (30) days on his account in addition to staying under the $250.00 account spending limit in order to maintain service to his cellular telephone account . . . .

Id. at 33-35. Justise did not respond to Nextel's request for admissions within thirty days.

On December 16, 2006, Nextel moved for summary judgment. In support, Nextel asserted that, under Trial Rule 36, Justise's failure to respond to Nextel's request for admissions required the court to deem those statements admitted. In June of 2007, the court held a hearing, during which Justise asserted that he had "responded in a timely manner to all discovery request [sic], but the Defendant's [sic] pretended that they [sic] did not receive a copy of the admissions." Appellant's Brief at 6. The trial court informed Justise that, "if you cannot demonstrate that you responded to those request[s] for admissions, then summary judgment is going to be granted in favor of the Defendant." Transcript of June 19, 2007, Hearing at 8-9. On June 27, 2007, Justise filed with the court his responses to Nextel's requests for admissions, but did not present any evidence demonstrating that he had provided those responses to Nextel. In relevant part, Justise admitted request number six and request number nine, but denied the remaining requests. On December 13, 2007, the trial court generally granted Nextel's motion for summary judgment. This appeal ensued.

DISCUSSION AND DECISION

Our standard of review for summary judgment appeals is well established. Asbestos Corp. v. Akaiwa, 872 N.E.2d 1095, 1096 (Ind. Ct. App. 2007) (citing Owens

Corning Fiberglass Corp. v. Cobb, 754 N.E.2d 905, 908 (Ind. 2001)). An appellate court faces the same issues that were before the trial court and follows the same process. Id. The party appealing from a summary judgment decision has the burden of persuading the court that the grant or denial of summary judgment was erroneous. Id. When a trial court grants summary judgment, we carefully scrutinize that determination to ensure that a party was not improperly prevented from having its day in court. Id.

Summary judgment is appropriate only if the pleadings and evidence sanctioned by the trial court show that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Id. (quoting Cobb, 754 N.E.2d at 909). On a motion for summary judgment, all doubts as to the existence of material issues of fact must be resolved against the moving party. Id. Additionally, all facts and reasonable inferences from those facts are construed in favor of the nonmoving party. Id. If there is any doubt as to what conclusion a jury could reach, then summary judgment is improper. Id.

Here, the central question is whether Nextel's requests for admissions were deemed admitted by Justise when he failed to respond within thirty days of his receipt of those requests. Indiana Trial Rule 36 states as follows:

> Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within a period designated in the request, not less than thirty (30) days after service thereof or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney.

Further, Indiana Trial Rule 5(B)(2) provides that "[p]roof of service of all papers permitted to be mailed may be made by written acknowledgment of service, by affidavit of the person who mailed the papers, or by certificate of an attorney."

Here, Justise presented no evidence, as contemplated in Trial Rule 5(B)(2), that he served on Nextel his responses to Nextel's admission requests within thirty days of having received those requests. "'Under Trial Rule 36, the failure to respond in a timely manner to a request for admissions causes those matters to be admitted and conclusively established by operation of law.'" Corby v. Swank, 670 N.E.2d 1322, 1324 (Ind. Ct. App. 1996) (quoting Henrichs v. Pivarnik, 588 N.E.2d 537, 543 (Ind. Ct. App. 1992)) (emphasis original to Corby). Indeed, "neither the trial court nor the jury can disregard the admission under Rule 36." Id. (quotation omitted). As such, our review of the record includes Justise's admissions under Trial Rule 36.

Justise's complaint alleges that Nextel deceived him when he entered into his contract for cellular services with Nextel. Critically, Justise alleges that he was not required to pay for service as long as he did not exceed $250 in charges. But Justise's admissions under Trial Rule 36 are fatal to those allegations. Justise admitted that the spending limit clause in his contract was merely a threshold amount that, once reached, would require Nextel to inform Justise of the amount of outstanding charges on his account. Justise also admitted that, the $250 spending limit notwithstanding, he is still responsible for monthly charges incurred for his cellular service, and that his failure to pay those charges could result in Nextel refusing to maintain that service. In light of

those admissions, Justise's allegations to the contrary in his complaint cannot stand. Hence, we must affirm the trial court's grant of summary judgment in favor of Nextel.

Finally, we address briefly Justise's assertion that "[i]n federal litigation, court grants [sic] pro se litigants wide latitude in the handling of their lawsuits. There should be, and possibly is, a similar standard in State Courts." Appellant's Brief at 8. In Indiana, "[i]t is well settled that pro se litigants are held to the same standard as licensed lawyers." Novatny v. Novatny, 872 N.E.2d 673, 677 n.3 (Ind. Ct. App. 2007). We see no reason to ignore that standard here.

Affirmed.

ROBB, J., and MAY, J., concur.